

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ESTATE OF VALERIE YOUNG, et al.,

ECF Case

plaintiffs,

Case No.: 07-CV-06241 (LAK)

- against -

DECLARATION OF JONATHAN BAUER, ESQ.

STATE OF NEW YORK OFFICE OF MENTAL
RETARDATION AND DEVELOPMENTAL
DISABILITIES, et al.,

defendants.

JONATHAN BAUER, an attorney admitted to practice before the Courts of the State of New York and this Court, certifies pursuant to 28 USC §1746 and under penalty of perjury, that the following is true and correct:

1. I am co-counsel for plaintiffs together with the Catafago Law Firm, P.C. I make this Declaration of my personal knowledge of this action and my review of the records and documents of this case. I submit this Declaration in support of this Motion to Quash.
2. The parties have completed all document discovery pursuant to demands that were exchanged (other than the issue of defendants' spoliation, the subject of plaintiffs' motion for sanctions, currently before this Court). The parties have also completed depositions and have designated expert witnesses and exchanged expert witness reports.
3. On May 15, 2008 I spoke to Dr. Richard Bindie, to whom the subpoena was directed. He informed me that on May 14, 2008 he received the subpoena by Federal Express.
4. Plaintiffs were not given notice of the subpoena until May 15, 2008, when we received a copy sent by fax transmission.

5. In a letter to defendants' counsel, plaintiffs sought consent to adjourn the depositions of both plaintiffs' and defendants' experts pending the determination by this Court of plaintiffs' motion for sanctions brought in connection with the spoliation of documents by defendants.

6. The reason for the plaintiffs' application is that the documents subjected to spoliation are material to expert testimony and opinion and the plaintiffs' expert presentation has been and continues to be prejudiced by the spoliation of documents from Valerie's clinical record.

7. The defendants declined to consent; therefore an application pursuant to Your Honor's Individual Practices is being filed concurrently with the courtesy copies of this motion.

Dated: May 19, 2008

Respectfully Submitted,

s/
Jonathan Bauer